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9 MEI-FANG LISA ZHANG,

Plaintiff,

v.

10 WEI-MAN RAYMOND TSE,

11 Defendant.
12 _____ /
13

No. C-07-04946 JSW (EDL)

**REPORT AND RECOMMENDATION
RE: PLAINTIFF'S EX PARTE
APPLICATION FOR ISSUANCE OF
ORDER FOR SALE OF DWELLING AND
PLAINTIFFS' MOTION FOR
DETERMINATION OF CLAIM OF
EXEMPTION OF BETTY MA**

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15 On October 8, 2010, Plaintiffs Mei-Fang Lisa Zhang, et al., filed an ex parte application for
16 issuance of order of sale of dwelling in order to enforce an earlier court judgment. At the time of the
17 judgment, Defendant Bill Shu Wai Ma ("Bill Ma") and his wife Betty Wong Ma ("Betty Ma")
18 owned a one-half interest in real property at 1945-1947 Kirkham Street, San Francisco, California
19 ("the Property"). Plaintiffs requested that the Court order the United States Marshal's Service to sell
20 Bill and Betty Ma's interest in the Property and then distribute the proceeds of the sale to Plaintiffs,
21 after giving a portion of the proceeds to Bill and Betty Ma pursuant to California's homestead
22 exemption.

23 On October 13, 2010, Plaintiff filed a motion for determination of Betty Ma's claim of
24 exemption, arguing that the Property is not exempt from sale. Plaintiffs later conceded that the
25 Property is subject to a homestead exemption, which does not preclude its sale, but does allow the
26 property owners to deduct a certain amount from the sale price and retain those funds.

27 On October 13, 2010, these matters were referred to this Court for a Report and
28 Recommendation. On October 18, 2010, this Court issued an order to show cause as to why the
order of sale of dwelling should not be made. On October 28, 2010, the non-debtor co-owners of the

1 Property filed a response as to why the sale should not go forward. On October 29, 2010, Betty Ma
2 filed a response to Plaintiffs' motion for determination of claim of exemption. On November 9,
3 2010, Plaintiffs filed a reply to the opposition. On November 15, 2010, Betty Ma filed a late
4 supplemental response to Plaintiff's motion for determination of claim of exemption. The Court
5 held a hearing on December 7, 2010. On December 15 and 16, 2010, Plaintiffs and Betty Ma filed
6 additional briefs addressing the interpretation and legislative history of California's homestead
7 exemption. For the reasons stated at the hearing and in this Order, the Court recommends granting
8 Plaintiffs' ex parte application for issuance for order of sale of dwelling with respect to Bill and
9 Betty Ma's one-half interest subject to a homestead exemption in the amount of \$100,000.

10 **Background**

11 This is a judgment enforcement proceeding based on a lawsuit that Plaintiffs filed on
12 September 24, 2007, asserting claims under the Commodity Exchange Act (7 U.S.C. §§ 1 *et seq.*),
13 the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961 *et seq.*), and California
14 law. Plaintiffs alleged that they were "victims of a foreign currency trading scam that Defendants
15 had been operating over the course of several years," and obtained a default judgment on February
16 3, 2009 against several Defendants, including Bill Ma. Pls.' Ex Parte App. at 4. Bill Ma's wife,
17 Betty Ma, was not a defendant. The total amount of the judgment was \$1,080,933.55. Plaintiffs
18 obtained \$44,350.86 under a levy on Bill Ma's bank accounts, but are still owed approximately
19 \$1,042,721.

20 Plaintiffs discovered through an asset search that Bill Ma was, at the time of the judgment,
21 an owner of the Property, a two-unit residential building in San Francisco. It is uncontested that at
22 the time of the default judgment, Betty Ma and Bill Ma "owned a ½ interest in the Property as
23 husband and wife, as joint tenants." Betty Ma's Res. at 1. According to a Grant Deed recorded on
24 June 13, 1975, title was held by: "Shu Wai Ma ["Bill Ma"] and Betty Wong Ma, husband and wife,
25 as joint tenants, as to an individual ½ interest, Wai Ling Ma, a single woman and Dick Soon Wong,
26 a single man, as joint tenants to an undivided ½ interest." Cooke Decl., ¶ 6, Ex. C. Betty Ma states
27 that she lives in the Property with her mother-in-law. Wai Ling Ma is Bill Ma's sister, and Dick
28 Soon Wong is Wai Ling Wong's husband ("the Wongs"), who also live at the Property. Betty Ma

1 states that her husband Bill Ma currently lives in China, but returns home every six months to visit.

2 On August 28, 2009, approximately six months after the default judgment, Bill Ma recorded
3 a Quitclaim Deed transferring his interest in the Property to his wife, Betty Ma. On May 6, 2010,
4 Betty Ma transferred her interest in the Property by Quitclaim Deed on May 6, 2010 to herself as
5 Trustee of the Ha Yee Trust.

6 On September 22, 2010, Plaintiffs served notices of levy and a writ of execution on Bill Ma,
7 Betty Ma, and all other Property occupants, seeking Bill and Betty Ma's interest in the Property. On
8 or around September 29, 2010, Betty Ma served a Claim of Exemption, claiming that the property
9 interest was separate property not belonging to a debtor. See Cooke Decl. ¶ 15, Ex. F. As of
10 October 8, 2010, Plaintiffs argue that after a reasonable search of the Assessor-Recorder of San
11 Francisco County records, "a current homeowner's exemption and disabled veteran's exemption do
12 not exist in the name of Bill Shu Wai Ma or Betty Wong Ma," and that a homeowner's declaration
13 has not been recorded. Pls.' Ex Parte App. at 2-3. Plaintiffs allege that the Property is subject to a
14 homestead exemption of \$100,000, and that there are no other encumbrances or liens on the
15 Property. Betty Ma argues that she is entitled to a homestead exemption of \$175,000.

16 **Discussion**

17 At the hearing, the parties agreed that the Mas' one-half interest in the Property is subject to
18 sale, and confirmed that the sole remaining issue is the amount of the homestead exemption to which
19 Betty Ma is entitled. Under California law, the Court must determine the proper amount of a
20 "homestead exemption" when real property is sold pursuant to an enforcement lien, (if certain
21 residence requirements are met under California Code of Civil Procedure section 704.710, which is
22 not disputed here). By statute, the homestead exemption amount is determined by one of three
23 categories:

24 (a) The amount of the homestead exemption is one of the following:

25 (1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of
26 the judgment debtor who resides in the homestead is a person described in paragraph
(2) or (3).

27 (2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the
28 judgment debtor who resides in the homestead is at the time of the attempted sale of
the homestead a member of a family unit, and there is at least one member of the
family unit who owns no interest in the homestead or whose only interest in the

homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

...

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

...

See Cal. Civ. Pro. § 704.730. The exemption claimant bears the burden of proof, and the Court can order an evidentiary hearing if more evidence is needed in making the determination of exemption.

See Cal. Civ. Pro. § 703.580(a)-(c).

Here, the parties dispute only the amount of the homestead exemption. Plaintiffs argue that Betty Ma is entitled to an exemption of \$100,000 under California Code of Civil Procedure section 704.730(a)(2), and Betty Ma argues that she is entitled to the higher exemption of \$175,000 under California Code of Civil Procedure section 704.730(a)(3)(B). The \$100,000 exemption applies if the debtor or spouse residing in the home is “a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.” Cal. Civ. Pro. § 704.730(a)(2). Plaintiffs argue that at the time of the judgment, Betty Ma, a member of the family unit, held a community property interest with Bill Ma, the debtor. There is no dispute that the Mas held the Property as community property. Thus, at a minimum, Betty Ma qualifies for the \$100,000 exemption.

Betty Ma contends that to prevail in claiming the greater exemption of \$175,000, she must only prove that either she or her husband are disabled and unable to engage in gainful employment. Cal. Civ. Pro. § 704.730(a)(3)(B) (“One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is . . . A person physically or mentally disabled who as a result of that disability is unable to engage in substantial

1 gainful employment.”) Betty Ma alleges that her husband is “unable to engage in gainful
2 employment as a waiter or as a driver because of medical disabilities with gout and dizziness,” and
3 therefore the exemption of \$175,000 applies. Ma Res. at 2. In her declaration, Betty Ma states:

4 My husband is unemployed and has been unemployed for the last 10 years. He
5 previously worked as a waiter and as an independent driver for hire for various
6 casinos locally and in Reno, Nevada. Based on discussions with my husband, he is
7 unable to find gainful employment due to various physical disabilities including gout
8 and dizziness. These medical conditions prevent my husband from working as a
9 waiter or a driver.

10 Ma Decl. at 2.

11 At the hearing, the Court noted that Betty Ma failed to provide any admissible evidence as to
12 her husband’s disability to qualify for the exemption pursuant to section 704.730(a)(3)(B). More
13 fundamentally, however, the Court questioned whether the homestead exemption under section
14 704.730(a)(3)(B) would apply where, as here, the disabled spouse does not live at the Property.
15 After the hearing, the parties submitted further briefing and evidence on the issues of Bill Ma’s
16 disability and the applicability of section 704.730(a)(3)(B) in this case. Because the Court
17 concludes that the section 704.730(a)(3)(B) exemption does not apply under the circumstances of
this case, the Court need not reach the question of whether Betty Ma has provided sufficient
evidence of her husband’s disability.

18 A fundamental rule of statutory construction is that the Court must determine the
19 Legislature’s intent in order to give effect to the purpose of the law. Rourke v. Troy, 17 Cal. App.
20 4th 880, 883 (1993). “Generally, courts look first to the language of the statute to determine
21 meaning. When statutory language is capable of two interpretations, we must look at the purpose of
22 the law to ascertain the Legislature’s intent.” Id. (citations omitted). The Court must construe
23 words in context and harmonize statutes with each other, to the extent possible. Id. “In addition,
24 legislative history is a legitimate and valuable aid in determining statutory purpose. It is well
25 established that reports of legislative committees and commissions are part of a statute’s legislative
26 history and may be considered when the meaning of a statute is uncertain.” Id. (citations omitted).

27 The statute states that the disability exemption is: “One hundred seventy-five thousand
28 dollars (\$175,000) *if the judgment debtor or spouse of the judgment debtor who resides in the*

1 *homestead* is . . . A person physically or mentally disabled who as a result of that disability is unable
2 to engage in substantial gainful employment.” Cal. Civ. Pro. § 704.730(a)(3)(B) (emphasis added).
3 The better reading is that the person “who resides in the homestead” is the one who must suffer the
4 disability. The legislative history confirms this construction. In a letter of recommendation to the
5 governor from the legislative counsel, the greater exemption for disabled homeowners is
6 recommended for the benefit of helping those who are disabled stay in their homes or accumulate a
7 nest egg. Specifically, the legislative counsel stated:

8 [A]pplying an upper exemption amount to persons who are physically or mentally
9 disabled and substantially unable to support themselves is appropriate because their
disability makes it more difficult for them to build a ‘nest egg’ or take action to
prevent the loss of their homes.

10 Bion Gregory, Legislative Counsel of California, letter dated July 11, 1984, p. 4. Here, Betty Ma
11 conceded that her husband, who is allegedly disabled, resides in China and only returns to the
12 Property to visit. There is no evidence that Betty Ma is disabled. Because Bill Ma does not live at
13 the Property, Betty Ma is not entitled to the homestead exemption of \$175,000.

14 Conclusion

15 Accordingly, the Court recommends granting Plaintiffs’ Ex Parte Application for Issuance of
16 Order for Sale of Dwelling, and determining that the real property and dwelling at 1945-1947
17 Kirkham Street, San Francisco, California, more particularly described as:

18 Beginning at a point on the southerly line of Kirkham Street, distant thereon 32 feet
19 and 6 inches easterly from the easterly line of 24th Avenue; running thence easterly
20 along said line of Kirkham Street 25 feet; thence at a right angle southerly 80 feet;
thence at a right angle westerly 25 feet; thence at a right angle northerly 80 feet to the
21 point of beginning. Being a portion of Outside Land Block No. 791
is subject to a homestead exemption in the amount of \$100,000.00 under California Code of Civil
Procedure section 704.730(a)(2). Because the Court need not reach the adequacy of Betty Ma’s
proof of her husband’s disability, the Court recommends finding that Plaintiffs’ November 9, 2010
and December 17, 2010 motions to strike are moot.

22 Further, the Court recommends appointing William T. Dunlap, III, affiliated with the firm of
23 Audino & Associates, 656 Clement Street, San Francisco, California, to conduct an appraisal of the
24 Property and directing Mr. Dunlap to submit his appraisal to the Court and to counsel of record.

25 In addition, the Court recommends directing the United States Marshall Service:

1 (a) to offer for public sale the interest of Defendant Bill Shu Wai Ma and his spouse, non-party Betty
2 Wong Ma, in the Property;
3 (b) distribute the proceeds resulting from such sale first to Betty Wong Ma in the amount of the
4 approved homestead exemption and the balance thereof to the Plaintiffs and/or other creditors and
5 prsons pursuant to California Code of Civil Procedure section 704.850.

6 Any party may serve and file specific written objections to this recommendation within
7 fourteen (14) days after being served with a copy. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P.
8 72(b); Civil Local Rule 72-3. Failure to file objections within the specified time may waive the
9 right to appeal the District Court's order.

10 Dated: January 3 , 2011

Elizabeth D. Laporte
ELIZABETH D. LAPORTE
United States Magistrate Judge